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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision : May 11th ,2007

\+ CRL.REV.P. 175/2005

ASHOK GOEL & ORS ..... Petitioner
Through Mr. S.D.Sharma, Advocate

versus

GOVT OF NCT & ANOR ..... Respondent
Through

CORAM:
Mr. Justice S. Ravindra Bhat

1. Whether reporters of local papers may be allowed to see the judgment.? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

% Mr. Justice S. Ravindra Bhat (Open Court)

1. The present petitioner impugns an order by the learned Metropolitan Magistrate dated 25.10.2004 whereby he issued process and summoned the petitioner upon a complaint by the respondent/complainant.

2. Mr. Sharma, learned counsel appearing on behalf of the petitioners, urge that the complaint was motivated with mallice and that the incident alleged in it never occurred. He relied upon the copies of documents and urged that in fact the petitioner was the victim of assault on the concerned date which had led to filing of initiation of

proceedings under Section 107/150 Cr. P.C. He relied upon the report of the Additional DCP, on the previous complaint by the respondent/complainant, even when the proceedings were started under Section 107.

3. Learned counsel placed reliance upon the relevant part of that report of enquiry which reads as follows :-

> *"In this regard, an enquiry was conducted by ACP/P.G. Cell, which revealed that on 11.5.2003, at about 10 PM, the complainant Sh. Sunil Kumar Sharma @ S.K.Sharma and his associate were taking dinner in the hotel of Titu in the area of P.S. Nand Nagri. In the meantime, Satya Prakash, Mehboob and Virender (alleged persons) came to the hotel for dinner. The complainant Shri Sunil Kumar Sharma started beating Satya Prakash over the issue of commission. When his other associates intervened into the matter, the complainant Sunil Kumar Sharma fled away from the spot. On this, Shri Satya Prakash alongwith Ashok Kumar (alleged persons) went to P.S. Nand Nagri and lodged a complaint. On receipt of D.D.entry, SI Shiv Nath of P.S. Nand Nagri got conducted the formal medical examination of Satya Prakash in GTB hospital and on his MLC the doctor opined the result of injury as `no mark of fresh injury'. I.O. also visited the house of the complainant but he could not be traced. Hence, no action was taken on the complaint of alleged person Satya Prakash as no cognizable offence was made out. During enquiry it has been found that no such incident of beating to the complainant and snatching of his money and other thing took place with the complainant as alleged in the complaint. During enquiry it was also found that both the parties were residing in the area of P.S. Welcome and also apprehended danger from each other. Hence, SHO/Welcome has already been directed to initiate preventive action against them to maintain peace. No other police action is called for. The allegations levelled in the complaint could not be substantiated during the course of enquiry.*"

4. It was submitted that on the basis of the information notice was issued under Section

107/150 Cr. P.C. on 15.3.2004 which was received by the complainant. Counsel contended that this appears to have annoyed the complainant who filed proceedings and commission of offences under Sections 324/506/395/120-B/34 IPC.

5. Learned counsel for the petitioner urged that there were inherent improbabilities on the complaint and that the court did not take into account the previous proceedings including the show cause notice under Section 107 Cr. P.C., initiated against the complaint and instead mechanically issued the summoning order. It was contended that the complaint was filed about 13 months after the date of the incident and the court fell into error in glossing over these circumstances.

6. Learned counsel relied upon certain judgments of the courts such as *State of H.P. Vs. M.P.Gupta, 2004 (2) SCC 349, Moideenkutty Haji and others Vs. Kunhikoya and others, AIR 1987 Kerala 184* and *Shahid Akhtar Vs. State of U.P. & Ors. 2004(1) Crimes 34* to contend that the court could not have proceeded as it did. It was submitted that the allegations in the complaint pertain to the conduct of several police officers yet the court proceeded without satisfying itself about availability of sanction under Section 197 Cr P.C. It is contended that the complaint and the evidence could never have pointed to commission of offences under Section 395 IPC.

7. The respondent though served not represented today. Apparently his counsel had objected to the maintainability of the present proceedings on the ground that summoning oder is an interlocutory order under Section 397 (2).

8. I have heard counsel for the petitioner. The impugned summoning order was issued after consideration of the materials available that is in the form of a complaint as well as the deposition of the complainant as CW-1 and another witness, namely CW-2.

Their depositions are on record.

9. The second respondent/complainant stated that on 11.5.2003, when he along with an assistant Pressman Nanhe were eating, the accused along with some unknown persons confronted them and demanded some outstanding dues. It was alleged that they beat him up. The petitioner's name was also implicated. It was also alleged that they were kicked and given fist blows. CW-1 deposed that CW-2 went to save him but he was also assaulted and pushed away. He further alleged that certain valuables such as mobile phone, wrist watch and cash worth Rs. 7500/- were snatched.

10. The complainant alleged that he had complained and approached the authorities for action of petitioner on earlier occasions and was intimidated from pressing it. He deposed that he was forced to shift his factory to some other place at Babarpur and thereafter he received summons under Section 107/111 Cr. P.C. CW-2 supported this version.

11. The complaint alleged about the incident which is said to have occurred on 11.5.2004 and set out in detail the various allegations. The complainant also mentioned about the initiation of proceedings under Section 107/111 Cr. P.C. and the threats held out against him.

12. At the stage of issuing process, the court has to satisfy itself as to existence of a prima facie case in support of the allegations made in the complaint. In this case the complaint has been substantiated by the depositions of CW-1 and CW-2. The complainant has also disclosed that he was threatened to withdraw his allegations and that the accused persons got proceedings under Sections 107/111 initiated. It is no doubt true that the trial court has to apply its mind and to see whether on the

probabilities the offences is made out and whether the ingredients are satisfied. However at the stage of issuance of process, the minute details of such evidence cannot be gone into. At any rate the complaint as well as the pre-summoning evidence did show prima facie commission of offences. It may be that the petitioner's allegations about being mallice or motivation on the part of the complainant are correct. Yet that is the matter which can be appropriately dealt with at the subsequent stage of the proceedings and cannot in any way be a ground for interfering with the impugned order under Section 397. In view of the above conclusions the petitioner is not entitled to relief. The revision petition is accordingly dismissed.

(S.RAVINDRA BHAT)
JUDGE

MAY 11, 2007
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